

(1990) 09 SHI CK 0040
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 202 of 1989

Bidhu Ram and Another	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 19-09-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 162
Evidence Act, 1872 — Section 27, 32, 33
Penal Code, 1860 (IPC) — Section 307, 309, 34, 7

Citation : (1990) 2 ILR HP 1224

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : R.K. Bawa, for the Appellant; B.K. Malhotra, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—This appeal has been preferred by the accused against their conviction by the Additional District Judge (1) Shimla in Sessions Trial No. 10 Section 7 of 1986. By decision of 22-9-1989, the accused have been convicted for a charge u/s 307 read with Section 34 Indian Penal Code and have been sentenced to rigorous imprisonment for four years and to pay a fine of Rs. 500/- each and in default of payment of fine to suffer further rigorous imprisonment for a period of three months.

2. Briefly, the prosecution case is that during the night intervening 9th January, 1986, Smt. Bimla Devi was attacked with a knife by the accused and her throat was cut but she survived the attempt. The matter was reported to the Police and the investigation was carried into the matter and after collecting the evidence in this case, the accused were prosecuted for the aforesaid offence and were ultimately convicted and sentenced to the extent aforesaid.

3. Now, by this appeal they have challenged their conviction on various grounds and their case is that the findings recorded by the trial Judge in this case are thoroughly inapt, illegal and against the evidence on record, therefore, they are

liable to be acquitted of the charge. Let the matter be examined in the light of the evidence given by the witnesses for the prosecution and the defence. Rai Dass (PW-1) states that Smt. Bimla Devi, his niece, was married to Man Dass, Son of the accused Smt. Surmu Devi, who has now married to accused Bidhu Ram. He came to know that the accused connived and attempted to kill Smt. Bimla Devi by inflicting a knife blow and she was taken to Rampur Hospital. Her clothes, namely, Salwar and shirt were stained with blood and they were taken by the police and sealed with Seal "H" in a packet. In cross-examination, he states that his village is at a distance of 20 Kms from Village Gaura, the place of incident. On being asked to name the persons from whom he came to know of this incident, he failed to name anyone. Further, he also failed to say the kind of seal used by the police to seal the packet. He also states that clothes were not taken by the police in his presence nor did he bring the Seal to the Court, although he states that it was given to him by the Police. Brij Lal Gautam (PVV-2) is the witness to the disclosure statement stated to have been made by the accused as to the blood stained ash of hearth, hidden by the accused behind the back side of his house. This statement is Ex. PW/A signed by him. Similar statement, he states, was made by the accused Surmu Devi, who also gave Nishan Dehi of the place where it was subsequently recovered by the police from under-neath a stone.

4. This witness belongs to Rampur Bazar where he is running a shop situated at a distance of 100-150 yards from the Police Station and the place of occurrence is at a distance of 25 Kms from Rampur Bazar. He states that he was called for the first time by the police in the Police Station for signing Ex. PW-2/A and Ex. PW-2/B. Gopal Dass was also there called by the Police, who also signed this statement. Jinu Ram (PW-3) states that the accused Bidhu Ram came to his House early in the morning when he was sleeping. The accused told him that Smt. Bimla Devi had inflicted a knife blow whereupon he told the accused that since he was sick and could not move from the bed, he (accused) should take members of the Panchayat. In cross-examination he admits that he is not related to the accused. Shayaru Ram (PW-4) was also associated by the Police in the investigation. He states that on 13-1-1986, Smt. Surmu Devi, while in the custody of the police gave Nishan Dehi of the place where she had dumped the blood stained ash and mud of hearth. The place was just behind her house and it was kept under a stone and was taken in possession by the Police and sealed with seal "A" which was given to him after use and immediately thereafter Ex. PW-4/A was signed by him and Smt. Hima Devi. The accused Bidhu Ram took the Police to that place where Surmu had got recovered the blood stained ash and the earth and he had also pointed out the place where the other accused had kept the blood stained earth and the ash. The memo, of Nishan Dehi was prepared which was signed by him and Smt. Hima Devi. Nishan Delhi is Ex. PW-4/B. He states that the Seal, given to him by the police had been lost by him.

5. During the cross-examination he states that the ash and the earth had already been recovered by the Police when it was shown to him. His statement was

recorded which he signed at the instance of the Police. He also admits that the ash and the earth was recovered from an open place.

6. Jeet Ram, Head Constable (PW-5) is a witness relating to the complaint u/s 107 Code of Criminal Procedure, once initiated by Smt. Bimla Devi. He states that he conducted the inquiry in to that complaint which ended in a compromise and the complaint was accordingly filed. In cross-examination he admits that he did not find any threat to breach of peace during his investigation of this complaint.

7. Dr. Vinod Kumar (PW-7) was posted as duty Doctor and In charge of Primary Health Centre, Dhar during 1983 to 1988. He states that in 1986 Smt. Bimla Devi was brought before him by the accused Smt. Surmu Devi. Smt. Bimla Devi had injury near hyoid wound. It was not bleeding at that time and blood had clotted. On being asked as to who had caused the injury, Smt. Bimla Devi was unable to speak, however, Smt. Surmu Devi informed him that Bimla Devi had inflicted those injuries herself. At this he sent Smt. Surmu Devi out and again made enquiries from Smt. Bimla Devi but she could not reply. He asked Smt. Surmu Devi that they should inform the police. Smt. Surmu Devi also informed him that Bimla Devi had told the members of Panchayat that she had self-inflicted the injuries on her body. She also told him that Bimla Devi was talking with others, at this time Bimla Devi was accompanied by two members of Panchayat and one of them was Mangat Ram. While accused Surmu Devi was telling him about the injuries and the cause of the same both members of Panchayat were standing nearby outside the door and they also heard it and they did not object to it. Bimla Devi was conscious at that time, but she did not respond to any of his enquiries in any manner nor did he make any enquiry from the members of the Panchayat nor he made any report to the Police regarding this incident. Next witness is Smt. Hima Devi (PW-8). Her version is that Smt. Bimla Devi is living in Village Dhar while the accused are living in Village Dwag. Since after the death of her husband Smt. Bimla Devi is not getting anything from the accused while living separate from them. She was then on visiting terms with the accused. She further states that the accused Surmu Devi came to her house to call her at 7.00 A.M. in her capacity as Member Panchayat and she told her to call Mangat Ram and Jaggi Ram, other members of the Panchayat and elder persons of the Village. On reaching the house of accused Smt. Surmu Devi, Smt. Bimla Devi was present in the kitchen in the house of the accused. She was bleeding from front side of her neck and was lying on the floor on a bed. On her enquiry as to the cause of bleeding, Smt. Bimla Devi did not give any reply. Other members of the Panchayat came there after about 15 minutes and Smt. Bimla Devi did not give any reply although all of them had been asking her about the cause of bleedings. Mangat Ram Member Panchayat asked her and accused Smt. Surmu Devi to report the matter to the Police at Rampur and accused Bidhu Ram was asked to remain with Smt. Bimla Devi and see that no-one tampers with the articles lying there. Accused Surmu Devi told her that Bimla Devi had inflicted the injury of her own with a knife. The matter was reported to the Police

by her through a written report. At the house of the accused, she saw blood near the hearth on the floor and saw blood stained ash kept in a "Thali". She also saw a knife lying there and the same is Ex. P-3. When the police came to the spot, the ash lying in the Thali" was not there. During cross-examination she admits that when accused Surmu Devi came to call her she told her that Bimla Devi had tried to commit suicide and she was requested to see her (Smt. Bimla Devi). She also states that when she reached the house of the accused ash was lying there in the sight of all. The bed and knife were also visible to all. She also admits that the village Primary Health Centre was nearer from the house of Smt. Bimla Devi as compared with the house of the accused, although she made a report to the police, in writing, however, it was not shown to her in the Court. She also admits that on the asking of the Police Smt. Surmu Devi had disclosed to them that Bimla Devi had cut her throat herself and in the Hospital after the throat was stitched by the Doctor, Bimla Devi had started speaking but she did not know whether she gave any statement to the Police. She (Smt. Bimla Devi) used to respond by nodding head also. She could not say if Smt. Bimla Devi had tried to commit suicide, since she had no personal knowledge.

8. Jaggi Ram (PW-9) also states that the accused and Smt. Bimla Devi are living at two different places separately. On the day of the occurrence, he was called by the accused Surmu Devi at about 8.00 A.M. along with Mangat Ram and when they reached the residence of Surmu Devi, Hima Devi (PW-8) was also present. Bimla Devi did not tell them about the cause of her injury. Having asked Smt. Hima Devi and accused Smt. Surmu Devi to go to the Police to lodge the report at the Police Station, Rampur, report was lodged and the police came to the Village on the same day and took in possession the knife and the ash which was taken in a parcel. Ash was taken out from the hearth. Although this witness has been declared hostile, however, for reasons to be recorded in the latter part of this judgment his statement is unassailable and evokes truth about the occurrence, in question. During Cross-examination, this witness again repeats that the ash was taken from the hearth and denies the suggestion that it was got recovered by the accused from the back side of the house from underneath a stone in his presence. Again the witness denies the suggestion that the injuries were caused to Smt. Bimla Devi by the accused with intention of causing her death so that she could not ask for her share in the property. On being asked by the counsel for the accused, the witness states that Smt. Bimla Devi could nod with her head. At that time, the knife and the ash lying there was visible to all and accused Smt. Surmu Devi had taken Bimla Devi to Village Dispensary and he did not know who else had gone with them. Head Constable Daya Sagar (PW-10) also states that he conducted enquiry u/s 107 Code of Criminal Procedure on the basis of application (Ex. P-5/A) which was handed over to Head Constable Jeet Ram (PW-5). In this inquiry compromise was affected between the parties and the application was filed since no threat of breach of peace was found.

9. Then, there is Dr. Bhupinder Gupta (PW-11), who states that Smt. Bimla Devi had injury on the front side of the neck when she was admitted in the Hospital

and Station House Officer, Davinder Singh (PW-13) recorded her statement in his presence. Smt. Bimla Devi told the police that she was having strained relations with her in-laws and accused Smt. Surmu Devi in order to oust her from her rights in the property, on the ground that she was suffering from T.B., had during the night taken her to their house where her hands and legs were caught by accused Shri Bidhu Ram and accused Smt. Surmu Devi inflicted knife injury to her on the neck and accused Smt. Surmu Devi had told her to tell anyone, asking about the cause of injury, that the same was self inflicted, otherwise they had threatened to her to be taken to task. It was also stated that on that night she remained in that house and on the next morning when the villagers had collected she was taken to Primary Health Centre in the Village where also she could not tell the Doctor as to the cause of the injury since she could not reply to his question due to agony. This statement was reduced into writing by Station House Officer Davinder Singh (PW-13) on 12-1-1986 in his presence which was read over to Smt. Bimla Devi and she signed the same in his presence and he also attested the same (Ex. PW-11/A). During cross-examination, this witness could not say as to whether he associated himself in the recording of this statement as a consequence of some application moved for the purpose and referred to him by someone. He also admits that he had not signed this kind of statement in the past. He admits that Dr. V.K. Arora was the In charge of the Medical Officers but does not remember, whether he received any written orders to join investigation with Station House Officer Davinder Singh whom he knew very well since his posting at Rampur. He admits that he was asked by the Station House Officer to attest this statement and admits that Smt. Bimla Devi was not admitted in the Hospital through him nor could he say as to how many days after her admission in the Hospital, the statement, in question (Ex. PW-11/A) was made. He further states that besides him, only Davinder Singh, Station House Officer was present there. Although it appears that it was a general Ward and there were many other patients present there but could not say whether the statement was recorded during lunch session or in the after-noon but states that it was recorded during the working hours and that the Hospital staff was present in the Ward. He also says that he did not examine Smt. Bimla Devi regarding her mental condition before her statement was recorded although he had found once that she had become abnormal and he had to give her a sedative through injection, and at that time she had started talking in a incoherent manner but he moves on to say that her mental condition was normal when her statement was recorded. He also states that he did not make any report to his senior officer-in charge about the statement of Smt. Bimla Devi nor he kept any record about his having attested this statement in the Hospital. He admits that there was no danger to her life while her statement was recorded and he remained present since Davinder Singh (PW-13) told him that the statement is essential to be recorded in the presence of a Medical Officer. And he denied the suggestion that the statement was not at all recorded in his presence and he simply appended his signatures on this document at the instance of Davinder Singh (PW-13) and that Smt. Bimla Devi did not sign her statement in his presence.

10. There is Bir Singh (PW-13). He was posted as Head Constable during this time and visited the spot along with Station House Officer, Davinder Singh (PW-13) on 10-1-1986. He has referred to the steps taken by him during the investigation of this case, however, in his cross-examination, he states that he recorded the statement of Smt. Bimla Devi in the Hospital besides the statement of Sagi Ram and Rai Dass. Besides the attesting witness of the recovery memo and Smt. Bimla Devi no one else was present there. He clarified that the statement of Rai Dass and Sagi Ram were recorded by him in the Hospital and he was not accompanied by any other police officer at that time and he did not join any other person from the Hospital in the investigation. He did not remember the names of persons, who had come along with Smt. Bimla Devi to Rampur but were two or three persons who came along with her. Davinder Singh (PW-13) is the Station House Officer who also investigated this case. According to him, Smt. Hima Devi (PW-8) came to the Police Station and made the statement that accused Smt. Surmu Devi had come to her in the morning and told her that Smt. Bimla Devi had tried to commit suicide by inflicting knife injuries on her neck. She requested that they should visit the spot and investigate. It was on her statement that first information report (Ex. PW-13/A) was recorded. He went to the spot along with his staff and found Bimla Devi on the threshing floor of other house of Smt. Surmu Devi (house of Bimla Devi). He found that Bimla Devi had an injury on the front side of her neck and blood had clotted on the injury but watery substance was oozing. In the presence of villagers he enquired from Bimla Devi as to the cause of the injury but she did not tell them anything.

11. After filling the form of injury report, he sent her along with Head Constable Bir Singh (PW-12) to Hospital at Rampur and himself went to the spot along with Hima Devi (PW-8), Mangat Ram, Jaggi Ram and Surmu Devi. The spot was inspected and site sketch was prepared and further investigation was carried out including the recovery in this case. He moved application (Ex. PW-13/D) to the Medical Officer, Rampur about the fitness of Bimla Devi for making a statement and he was told that the same be presented to Dr. Bhupinder Gupta (PW-11) who was having a round of the Ward. Dr. Gupta (PW-11) examined Bimla Devi and gave an opinion that she was fit to make a statement. The statement was given and the same was reduced into writing in the presence of the Doctor. It was read over to Smt. Bimla Devi and she signed the same in token of its correctness. The witness gave account of the incident and also stated that the accused Bidhu Ram caught her by her hands and co-accused Surmu Devi gave her knife blows in the neck during the night intervening 10th of January, 1986. This was done for the reason that the accused did not want to give the share in the property. He admits that initially a case u/s 309 Indian Penal Code was recorded and after recording the statement of Smt. Bimla Devi, this case was changed to Section 307 read with Section 34 Indian Penal Code. The accused was arrested on 12-1-1986 and as a sequel to their statements, recovery of blood stained ash, which had been kept in a Thai, was found buried, was recovered from underneath a stone on the back side of the house. The place was

demarcated by Surmu Devi. The investigation was completed by him and the present challan was moved for the prosecution of the accused. During cross-examination, he denies that Hima Devi (PW-8) had given him any application in writing. He admits that he did not obtain any certificate, in writing, from the Doctor about the mental fitness of Smt. Bmila Devi. He also admits that while her statement was recorded, one nurse and a Doctor from the Hospital Staff were present besides the patients and he did not join any other member of the staff or patient in the Hospital in the investigation except Dr. Vaish (PW-6) and Dr. Gupta (PW-11). He denies the suggestion that the statement was not recorded in the presence of Dr. Gupta (PW-11) and he was simply to attest it at a latter stage. He also states that the statements u/s 27 of the Evidence Act were made by the accused at the Police Station in the presence of Brij Lal Gupta (PW-2) and Shri Gopal Dass. He admits that Brij Lai Gupta (PW-2) was present in the Police Station along with Gopal Dass at that time, but he could not give any reason why Gopal Dass had come to the Police Station. Relating to the complaint u/s 107 Code of Criminal Procedure he admits that the same was consigned to record since there was no danger of breach of peace and again says that there was a compromise. Dr. Nirmal Vaish (PW-6) states that Smt. Bimla Devi was brought to her on 10-1-1986 at 4.45 P.M. by Head Constable Bir Singh (PW-12). She conducted the Medical examination and Smt. Bimla Devi was not in a position to speak at that time. Her observation relating to the examination of Smt. Bimla Devi are as follows:

1. There was stab wound of the size of about 1/3rd inch triangle in shape in front of the neck, skin deep with very minor stab in trachea also. Clotted blood around the wound in front of chest.
2. Foams coming out of the trachea.
3. An incised wound in the middle of chin in front about 1/2 an inch in size vertically downwards and one more similar wound parallel to it about 1 cm apart to the right side, skin deep.
4. G.C. was satisfactory. Patient responding to the questions but unable to speak. B.P. was 90/50 Mm of Hg Heart and lung NAD at the time of examination. Wound dressed patient kept on 1/V fluids, Injection decadron, heavy anti biotic and T.T. injection.

According to this Witness, these injuries can be caused by Chhura (Ex. P-3) and they are not necessarily dangerous to life but can be dangerous to life if the shock is there or inflammation of wound develops at some subsequent stage causing the suffocation or respiratory failure afterwards. She also states that it is not necessary that in every case injuries could result insanity but if the patient is under very much shock and fear, it could be said that the patient could become mentally puzzled. In cross-examination she admits that the injuries on this side of the body are usually suicidal. Referring to the injuries, the witness admits that the injuries could be self-inflicted.

12. This is the kind of evidence that has come on the record of this case and on the basis of prosecution case, R.K. Bawa learned Counsel for the accused has raised number of objections. It was contended that prosecution case, as set up, is thoroughly false and unbelievable. The accused did not commit crime, in question and they have been convicted by the trial Court by drawing inapt and erroneous conclusions from the statement of prosecution witnesses. It appears from the prosecution case that the motive for the commission of the crime is the demand of share of property by Smt. Bimla Devi from the co-accused. In order to re-enforce this point, the complaint u/s 107 Code of Criminal Procedure initiated by Smt. Bimla Devi against the accused sometime past was also pressed into service. This argument of B.K. Malhotra, learned Counsel for the State is not at all tenable. It is in evidence that Bimla Devi was married to the Son of Smt. Sunnu Devi who had died 8-10 years before the incident. Smt. Bimla Devi was living in the house that was being occupied by her along with her deceased husband. It is in village Dhar, a distant place from Drag, the village of the accused. She had separate property in her possession. She was cultivating it and the accused were not maintaining her at all. There is no evidence pointing out any quarrel between the parties relating to any share in the property and nor any such quarrel was in the knowledge of any of the villagers in these two villages and in case there had been any such past quarrel that evidence could be easily collected and proved by the prosecution. On the second question, there has been a complaint u/s 107 Code of Criminal Procedure but it does not say anything that the so-called apprehension of breach of peace related to any dispute qua property. More over, on investigation, by the police it was found that there was no such apprehension and the matter was dropped. This kind of complaint has been pressed into service by the prosecution without any basis for its inclusion.

13. The next question is whether the occurrence, as alleged by the prosecution, can be stated to be correct in view of the facts and circumstances of this case and the statements of witnesses in the context of those circumstances. The conclusion is that the police gave push to the incident at a subsequent stage, otherwise it was a pure case of attempt to suicide by Smt. Bimla Devi. The reasons for this conclusion can be deduced in the following manner.

14. It has been stated by number of witnesses, we can say, Hima Devi (PW-8), Jaggi Ram (PW-9) and Mangat Ram (not examined) that they were called to the place of occurrence by the accused in the early morning of 10-1-1986. They also say that the accused had told them that Smt. Bimla Devi had committed suicide and caused injury to her throat therefore, they were needed to look into the matter. Further, if we examine this kind of conduct of the accused, it is quite clear that it was a case of self infliction of injuries by Smt. Bimla Devi and the accused has nothing to do with it. In case they had any motive to harm Smt. Bimla Devi, they could finish her at any time after the death of her husband and then during the whole night she is stated to have lived in a separate room in the house of the accused. Although there is no clear version as to the time of occurrence, however, it appears that the incident appears to have taken place in

the early hours of 10th January, 1986 and soon after the taking place of this incident, the accused moved to inform the villagers. Villagers, namely, Jagat Ram, Mangat Ram, Hima Devi, Jinu Ram and Ors. came to the spot, however Smt. Bimla Devi did not tell them that the accused were responsible for the commission of the crime. None prohibited her from doing so at this stage. Then comes the second stage where she could name the accused when she was taken to the Primary Health Centre of the Village where Dr. Vinod Kumar (PW-7) questioned her time and again. There also she was not taken alone by Smt. Surmu Devi since according to the statement of Dr. Vinod Kumar (PW-7) the members of Panchayat were present and she was questioned in their presence and within their hearing and they also neither objected to what was going nor said anything adverse to the accused. Then comes the third stage when she was taken to the hospital by Bir Singh (PW-12) along with certain other villagers. She did not name the accused to Head Constable Bir Singh (PW-12) nor to the duty Doctor Nirmal Vaish (PW-6). Shri B.K. Malhotra learned Counsel for the State submits that Smt. Bimla Devi could not say because she could not speak is not acceptable since it is in evidence that she could very well nod and thus point out the accused by this method as there is sufficient evidence available on the record of this case pointing out that she was so nodding on number of occasions including pointing out the places of injuries.

15. Then comes the crucial aspect of the prosecution case on which great stress was laid by R.K. Bawa, Advocate in defense of the accused. The learned Counsel submitted that the recording of statement (Ex. PW-II/A) by Station House Officer Davinder Singh (PW-13) in the presence of Dr. Bhupinder Gupta (PW-11) is a complete concoction and in case it is taken out of the prosecution case, the prosecution case stands smashed. But for this concoction, no case could be registered and initiated against the accused, learned Counsel contends. I see great force in this submissions of the learned Counsel for the reason that the conduct of Dr. Bhupinder Gupta is such which clearly demonstrates that he signed statement at a latter stage simply on the asking of the Station House Officer Davinder Singh. He was not the incharge of the Hospital. No application was moved by him. He had not examined Smt. Bimla Devi neither at the initial stage nor she appears to have been examined at any subsequent stage. The application, which Station House Officer, Davinder Singh states to have been moved was given to the Incharge of the Hospital and it is clear from Dr. Gupta's statement that he did not receive any such application. His statement is that he associated himself simply because the investigating officer told him that the statement has to be recorded essentially in presence of the Doctor. It is not understandable why he did not associate any other person from the Hospital Staff or any one else from the Ward to witness the recording of the statement which he could very easily do since many were available at that time. It is noticeable that the application moved in this case by Davinder Singh was simply an application to find out whether Smt. Bimla Devi was in a fit state to give the statement and not that her statement was intended to be recorded. Moreover,

this application (Ex. PW-13/D) has not come from the custody of the hospital, it was produced by the Station House Officer Davinder Singh during his examination in the Court. Even for the sake of argument it is accepted that Dr. Gupta had examined Smt. Bimla Devi at some stage during her admission in the Hospital, in that event also it appears from his statement that her mental condition was not good and she had to be given some sedative through injection since she became violent and was incoherent in her speech. The statement of Dr. Bhupender Gupta is liable to be rejected being absolutely unbelievable.

16. Further Bir Singh (PW-12) states that the statements of Shrimati Bimla Devi, Sagi Ram and Rai Dass were recorded by him in the Hospital and these witnesses took Bimla Devi to the Hospital from the spot along with a few other villagers. This fact has been admitted by Station House Officer, Davinder Singh in his statement when he says that Smt. Bimla Devi was sent to the Hospital with Head Constable Bir Singh (PW-12). It appears quite clear that it was Bir Singh who recorded the statement of Smt. Bimla Devi but which is that statement has not been produced on the record of this case but statement (Ex. PW-II/A) has not been proved by this witness although the same has been proved through Davinder Singh (PW-13) and Dr. Bhupinder Gupta (PW-11). From the version of Bir Singh (PW-12), it can safely be concluded that Davinder Singh (PW-13) did not at all record any statement of Smt. Bimla Devi and document (Ex. PW-II/A) is simply concoction and cannot be believed. Shri R.K. Bawa, rightly contended that this statement (Ex. PW-11/A) is inadmissible in evidence for variety of reasons, namely, it is a statement recorded and then signed by Smt. Bimla Devi, therefore, it is hit by Section 162 Code of Criminal Procedure. Further, it being a statement recorded by the police and signed by Smt. Bimla Devi, therefore, it loses significance in view of the fact that Smt. Bimla Devi has not been examined by the prosecution in this case and without giving opportunity to the accused to cross-examine, this statement cannot be made use of against the accused. It is also not relevant under Sections 32 and 33 of the Indian Evidence Act. Now comes the question why the prosecution did not examine Smt. Bimla Devi in this case. Shri B.K. Malhotra, learned Counsel submits that Smt. Bimla Devi had turned insane, therefore, it was not possible to examine her in this case. I do not see any substance in this submission for the reason that the prosecution has not established as to how and at what stage Smt. Bimla Devi slipped into the zone of insanity. Reference to the statement of some of the prosecution witnesses in this regard is equally insignificant because none of them has been quite clear and categorical as to the stage and state of Bimla Devi's becoming insane and what kind of insanity she developed, there is no evidence. The prosecution has not moved any application to the Court pointing out this kind of development. It should have specifically moved an application to the trial Judge pointing out the insanity factors supporting this issue and satisfied the Court as to this aspect of the matter, since she being the most important material witness in this case, her exclusion was obviously to create most serious dent to the prosecution case. It appears from the order-sheet of dates

29-3-1989 and 30-3-1989 that Smt. Bimla Devi has been dropped apart from some other witnesses, who, in my opinion, are also material witnesses to the case, namely, Mangat Ram and Gopal Dass. Casually, in my considered opinion, on my examination of the matter quite seriously and exhaustively, the case took this kind of turn as soon as the Police was able to secure Statement (Ex. PW-11/A) otherwise, the matter was quite clear and the only thing that could be seen in the case was that the injuries caused to Smt. Bimla Devi were self-inflicted and the accused were not responsible for the same. The exclusion of material witness, more particularly, Smt. Bimla Devi is intentional for the reason that in case she had been examined in the case by the prosecution, she may have demolished the prosecution story that took its root from the statement (Ex. PW-11/A). The defence witnesses examined by the accused in this case have also rejected the prosecution version of the case and there is nothing to disbelieve their statements.

17. Lastly, let me deal with the recoveries alleged to have been made pursuant to the statement of the accused recorded u/s 27 of Evidence Act. These are no recoveries in the eye of law and no reliance can be placed on this kind of recovery. It is in evidence that these articles were found at the place of occurrence by many including the prosecution witnesses, when they visited the house of the accused. When they had been seen by these persons at the place of occurrence, and they had said so to the Police, I see no reason why the accused should have concealed the ash at a open place accessible to all. In addition to this, there are certain prosecution witnesses who have said that the ash was taken from the hearth and while some other have stated that they were associated at a time when the Police was already in possession of the same. Their signatures were sought on the statements at a subsequent stage. This appears to be correct since the recovery witnesses appear to have been associated at Police Station, Rampur to which place they belong and were called to the Police Station. The conclusion, therefore, is that this kind of recovery is thoroughly absurd and cannot be accepted and used against the accused.

18. The result of the aforesaid examination of the matter is that there is merit in this appeal and the same is allowed. The judgment of the trial Court is set aside and the accused are acquitted of the charge. They are stated to be on bail. Their bail bonds and surety bonds are hereby cancelled.